

The National Association of Small Trucking Companies

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June 15, 1998

Federal Highway Administration
Attn: Docket Clerk
U.S. DOT Dockets, Room PL-40 1
400 Seventh Street, SW
Washington- DC 20590-000 1

RE: Docket No. FHWA-98-3706 ²¹ RIN 2 125-AD52
Hours of Service of Drivers; Supporting Documents

To whom it may concern,

My name is Buster Anderson; I am the vice president of The National Association of Small Trucking Companies, Inc. (NASTC.) NASTC represents approximately 1,000 trucking companies who range in size from 2 trucks to 200 trucks; our average member operates 25 newer units. While we are a non-homogenous group, most of our members do run long and I would estimate that almost all of our members are required to have their drivers maintain Records of Duty Status and comply with Hours of Service regulations.

One of the services we provide to our members is we try to help them develop programs that allow them to operate in compliance with Federal Motor Carrier Safety Regulations. The difficulty with this proposed rulemaking is that I cannot go to our members and tell them that if you do it this way, you will have a good program and be in compliance with the rules. We need either a lot more clarification or a system that will approve programs as **effective**. I can encourage NASTC members to participate in programs if I can reasonably assure them that their participation will put them in compliance. This cannot be accomplished unless there is a clear understanding of what the rule is by not only the carriers but the auditors as well. Any program that requires the individual auditor to bless it as effective fails to achieve the clarity needed to encourage good program development.

This proposed rulemaking seems to have been written under the misconception that the **average carrier** runs hundreds of trucks, has a large staff including someone dedicated solely to safety and compliance, and that the implementation of these proposed rules would be minor adjustments to existing programs. A small trucking company has none of these things, and these proposed rules would require him to add staff and incur great expense in an effort to comply with unclear rules. The vast majority of trucking companies in this **country are** small.

I would like to say that NAS'JC and all of **our** members are absolutely committed to safety. I do not know of even one carrier member that would knowingly sacrifice safety for any amount of increased profit. I believe that pro-active safety programs pay big dividends to those companies that implement them. Safer carriers enjoy lower operating costs, better employee relations as evident by lower driver turnover, lower insurance rates, and better customer relations. Since the savings that a company realizes from a safe operation are not always easily quantifiable, particularly during this prolonged period of a soft insurance market, it is more difficult to convince a small carrier that the investment in

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safety is justified. This is not because they are not committed to safety, but because they may not realize they have a problem. An accident or an out of service order for one of our members is an event, not just another every day occurrence that may impact their statistical standing with the regulators. Since these incidents are few and far between, it's difficult to justify the expense of a full time trained professional safety manager to deal with these isolated situations. Our company owners and managers all wear many hats. They are excellent crisis managers, directing their attention to those areas of their businesses that need it the most at the time. Running safe operations and operating in compliance with the Federal Motor Carrier Safety Regulations is very important to our members, but these areas do not lend themselves to crisis management.

In reviewing the notice of proposed rulemaking, I have several concerns. First of all, I would like to go on record as stating that NASTC agrees with the underlying sentiment of this proposed rule; all carriers should have programs in place to ensure safe operations and compliance with the rules. As it relates to Hours of Service we believe that every motor carrier should have a program in place to reasonably assure themselves that their drivers are complying with the rules, and to the extent they're not, have measures in place to actively encourage compliance through education, training and discipline. Where I part company with the proposed rulemaking is it lacks focus and direction. The proposal list over 30 documents that could be used as supporting evidence for a log audit program and assigns no value to one of these documents over another. Give us some guidance! Show us what you think an ideal program should look like. Which of these potential supporting documents would you prefer we use? If we set up our program using bills of lading are we going to have trouble with the auditor who believes that fuel receipts are a better supporting document? If we set up our program using fuel receipts and toll tickets, will the auditors limit themselves to those supporting documents in the audit? Are we to apply supporting documents to every single driver log that is presented to us, or will a random sampling of 10%, 25% or 50% be acceptable? Tell us what supporting documents you would like for us to use, to what degree you would like for us to use them, and inspect us for compliance based on the programs we develop. I cannot stress enough that the language in any proposal on this issue must address what is acceptable behavior on the part of the auditor. The biggest fear of many of our members is that regardless of how they try to put an effective program in place, an auditor will come in and apply some obscure document to the logs in an effort to find the carrier at fault. This fear is well founded; we've encountered this behavior from auditors on more than one occasion.

A program developed with the proper guidance should either be acceptable or not acceptable based solely on the program itself. Under the proposed rulemaking, I could easily see where two identical programs could be judged differently. If in the eyes of the inspector a program is not effective then that carrier is subject to change its program and possibly encompass all documents that could be classified as supporting data. This is neither fair nor practical. A program should stand alone based on its design. If the program is not being properly administered, that should be a separate issue. If a motor carrier is not doing an adequate job of implementing a well designed program, they should be encouraged to expend their resources in improving their implementation, not starting all

over again. Program design and implementation are both important, but failure in one area should not bring punitive action in the other.

Another area of concern in the proposed rulemaking is the notion that most carriers are already doing these things but just lack a written program. Although most carriers are trying to do something to ensure compliance with the hours of service regulations, many companies leave program design to the individual who is performing the audit in their company, or the outsource provider who is holding itself out as an expert in this area, or a software company who has developed a program to assist carriers with their log audits. While in most cases an adequate job of reviewing logs for violations of the 10, 15, and 70 hour rules is accomplished, most such programs fall short on supporting document comparison for falsification. Also, the idea that most carriers have programs in place to readily check mileage between points is not correct in my estimation. Even when such programs exist their application to the log audit system can be cumbersome. Many carriers, in my opinion, have not developed more effective programs in this area because of the belief that what they do does not matter. They feel like no matter what they do, they will be cited for violations in this area. They will be much more likely to be proactive in program development and participation if they have a clear understanding of what an acceptable program is and have some reasonable assurances that they would be exposed only to an audit of how effective that program is administered.

Another concept that is far off target is that trucking companies can easily document when a trip begins, ends, and is broken by rest periods or meals. Most small trucking companies have one base and the majority of their loads originate and terminate somewhere other than that location. Requiring a driver to call to verify his change of status each and every time is not practical. Nor is it practical to require each and every carrier to invest in satellite tracking technology and the additional personnel that would be required to keep up with all the data that is collected. To a large degree, we must trust our drivers to provide us with true and accurate data in this regard. A driver that displays a propensity to falsify his logs may be held to a higher standard of scrutiny than other drivers, but to operate under the assumption that all drivers are not to be trusted or should be considered guilty until proven innocent is not only unfair but insulting.

Another concern raised by the proposed rulemaking that I find disturbing is how it will effect outsourcers. Smaller trucking companies, in many cases, have excellent people working for them in many areas of their businesses. They accomplish this through outsourcing. While a small carrier usually cannot afford a full time safety engineer to manage their safety program, they can afford access to the best experts in the field by contracting with a well staffed and qualified expert to perform this function for them. The problems with outsourcing log audits are two fold. The time it takes to collect information from the driver, send it to the outsource provider, and wait for its return is often too long, particularly when approaching drivers with violations is much more effective when they are still fresh in the drivers' mind. This proposed rulemaking would further complicate outsourcing. Carriers would have to transmit to their contractor not only the driver record of duty status but supporting documents as well. Which supporting

documents? We're not sure! Outsourcing is very popular with smaller carriers and how this will be affected by the proposed rule change needs to be addressed.

I would be remiss in my responsibilities to the members of NASTC if I did not take this opportunity to state that the hours of service rules need a lot of work. There has been a lot of talk over the past few years about revamping the rules to make them more fair and allow drivers and companies alike to be more productive. Many practical proposals have been put forth and seen no action. Instead, we are now commenting on rule changes that make the **enforcement** of the old antiquated rules easier for the regulators and more difficult for the trucking companies and drivers. What has happened to the notion that we need to fix these antiquated rules? What about the 24 hour restart proposal? What about the fatigue studies that seemed to indicate that time of day is as much a contributing factor to driver fatigue as the hours that the driver had been behind the wheel? If driver fatigue is the real issue, why do we never hear any discussion about restricting shippers and consignees from requiring and/or coercing long haul truck drivers from physically loading and unloading freight? Have we given up on trying to develop more sensible rules? I understand that changes take time and must be well thought out, but this proposed rulemaking seems to be a step in the wrong direction. If we cannot change the rules to make more sense then let's give the regulators a bigger hammer to make compliance with the old antiquated rules a more pleasant alternative than non-compliance.

As I stated earlier, I agree with the basic premise that every motor carrier should have some kind of program in place to ensure compliance with the hours of service regulations. This proposed rulemaking, however, falls well short of reasonable. Give us more guidance. Simplify the proposed rule so that small trucking companies can develop and implement a program with confidence. Place language in the proposed rulemaking that addresses what is acceptable for an investigator or auditor; auditor discretion must be removed to ensure a fair program. Define the process. When a driver has a positive drug test we know exactly what is required by the regulations because the process is clearly defined. Please develop the same kind of clarity as it relates to hours of service and carriers will respond with programs that get the job done.

Sincerely,

A handwritten signature in black ink, appearing to read "Buster Anderson". The signature is fluid and cursive, with the first name "Buster" and last name "Anderson" clearly distinguishable.

Buster Anderson
Vice President, NAS'JC